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TOWN ATTORNEY REPORT

DATE: September 27, 2001

FROM: Monroe D. Kiar 

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town Attorney's Office was previously advised by the Finance Department that the Bid Selection Committee met on September 12, 2001 relevant to the selection of a consultant to perform the study of the western water service area. The Bid Selection Committee ranked URS as its first choice. The Town Attorney's Office spoke with Mr. Wallace, who advised that it is his belief that the Bid Selection Committee will present its ranking to the Town Council for its review at the next Town Council Meeting.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. The plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has move to tax court costs against the Plaintiffs. His motion remains pending.
3. **Sessa v. Town of Davie (Forman):** On September 6, 2001, the Town Attorney's Office forwarded to the binding mediator its Memorandum of Law concerning the Forman properties. This matter has been bifurcated pursuant to agreement of the parties and the initial issue for determination at the first mediation session was whether the Town was precluded from imposing a special road assessment upon the Forman properties as a result of a "Settlement Agreement" dated November 12, 1985, negotiated by the prior Town Attorney and a former Administration. It is the contention of the Formans that by virtue of the language contained in the Settlement Agreement in 1995 regarding annexation, the Town does not have a right to impose a special assessment for the road improvement in question. The Town Attorney's Office of course, has taken a different position, as has the prior Town Attorney. Both sides presented oral argument in support of their respective positions on this issue at the mediation session held on Tuesday, September 11, 2001. The provision in question, Section 5.(e) of the Settlement Stipulation of 1995 reads "The

Defendants will provide fire and police protection together with sewer and water and other municipal services to the lands without any special assessment, surcharges or other special exactions or taxes." The position of the Town Attorney's Office is that the road in question was a capital improvement and therefore, the language in sub-provision 5.(e) of the Settlement Agreement does not provide the subject property with the perpetual exemption from special assessments from capital improvements, such as the road. The binding mediator requested that both sides present further legal authority relevant to the distinction between a "municipal service" and a "capital improvement or outlay". After receipt of such further legal authority submitted by the parties, the mediator will make a determination. If the binding mediator determines that the Forman properties are subject to a special road assessment, then a second binding mediation shall be scheduled to determine whether or not the Formans' properties specifically benefitted by the work which is the subject of the disputed special assessment.

4. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** United States District Judge Jose A. Gonzalez, Jr. dismissed this action as to the Plaintiff, Coastal Carting Ltd. only. This case will proceed as to the garbage companies allowed to intervene. At this time, the case is not being prosecuted against the municipalities, including the Town of Davie. It is Mr. Johnson's understanding that the municipalities may be brought back into the case at a later date since the Resource Recovery Board of Broward County is still alleging that the municipalities are indispensable parties.
5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are now awaiting the court's decision.
6. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties timely filed a Notice of Appeal seeking further review of the matter by the United States Court of Appeals for the 11th Circuit. The Appellate Brief of MVP Properties, Inc. has just been filed and the Answer Brief of the Town will be filed shortly. The parties have also been ordered by the Appellate Court to attend a mediation conference on November 1, 2001.
7. **Cummings v. Town of Davie:** The Town and the Plaintiffs entered into a Stipulation for Settlement which was filed with the court at the July 23, 2001 hearing. The attorney for the Plaintiffs has advised the Town Attorney's Office that the Plaintiffs have begun the variance application procedure required under the terms of the Stipulation for Settlement.
8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with our Building Official, Mr. Sprovero. Mr. Sprovero has advised the Town Attorney's Office that the exterior of the home is now nearly complete. The exterior has been painted and the construction debris is being removed. The roof tile is on back order, but should arrive on Monday, October 1, 2001, and it is anticipated that the completion of the exterior in total is eminent. This has been the main goal of the Code Enforcement Division, the

Town Attorney's Office and the Building Department, as well as the residents in the community. The owner has applied for a permit to complete the interior of the structure.

9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture has filed a motion seeking to tax costs of approximately \$11,000.00 against the County and the coalition of cities due to the 4th District Court of Appeal's reversal of Judge Fleet's Ruling in the Circuit Court case. In the meantime, the coalition of cities successfully filed a Rule Challenge in an Administrative proceeding before DOAH in which the Administrative Law Judge found that the Rule promulgated by the Florida Department of Agriculture relevant to the removal of healthy, but exposed trees within a 1900 foot radius to have been an invalid exercise of delegated legislative authority by the Department and in violation of the Florida Statutes. It is anticipated that the Department of Agriculture and Consumer Services will publish a proposed Rule in an attempt to promulgate a rule which would withstand a challenge by the coalition of cities before DOAH. The Department has not yet published such a rule, but once it does so, the coalition of cities is ready to again challenge its validity before DOAH. As there is no rule in place however, the Department can only cut down infected trees and cannot cut down uninfected trees within a 1900 foot radius of a citrus tree exhibiting visible signs of Citrus Canker. As stated earlier, the Department is seeking to recover its costs of approximately \$11,000.00 from the Circuit Court case and has filed a motion against the County, the coalition of cities and the individually named plaintiffs. The County is requesting each city be prepared to contribute between \$2,500.00 and \$3,000.00 to cover the costs sought by the Department in the Circuit Court case, and to cover current and future costs incurred by the County. The County anticipates that its costs will total \$30,000.00. By the costs being paid by the County and cities, any personal liability for payment of same by the individual plaintiffs would be eliminated. In the meantime, the County and coalition of cities is also seeking to recover its costs in the DOAH proceeding which it hopes will offset any costs awarded to the Department in the Circuit Court case.
10. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it go to trial.
11. **Reinfeld v. Town of Davie, et al:** The Florida League of Cities attorney assigned to represent the remaining individual defendant, Mr. Weiner, received a response from the Plaintiff to Defendant Weiner's Motion to Dismiss. In turn, Mr. Marrero has filed a reply in support of the Motion to Dismiss Mr. Weiner as a defendant. Mr. Marrero is confident that Mr. Weiner will be dismissed as a defendant in these proceedings, but is awaiting the court's ruling on his motion. Discovery procedures have been commenced by both sides

and Mr. Burke has received the Plaintiff's response to the written Interrogatories propounded by him upon the Plaintiff. Both sides will be conducting further discovery in this litigation.

12. **Spur Road Property:** The Town's outside legal counsel, Mr. Burke has indicated that the Department of Transportation has agreed to award the property to the high bidder and the Town has filed with the Department its notice that it will be filing a formal protest of the Department's action. The next step, according to Mr. Burke, will be for the Town to file a formal protest and then the Department must make a ruling or send this matter to the Division of Administrative Hearings for further action.